Office - Supreme Court, U. S.
FILED
APR 10 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1944.

No. 1055

G. F. HOWARD, PETITIONER,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

REPLY BRIEF OF PETITIONER IN OPPOSITION.

G. F. HOWARD, *Pro se.*

EASTWOOD PRINTING CO., 2031 CURTIS STREET, DENVER

INDEX.

	PAGE
Meade v. Smith, 28 Kansas, p. 570	2
J. I. Case Co. v. National L. R. Board, 320 U. S. ....., 64 S. Ct. 579, par. 6	2
H. J. Hines Co. v. National L. R. Board, 311 U. S. 514, 523-526, 61 S. Ct. 320, 324, 326, 85 L. Ed. 309	2
Stark v. Wickard, 320 U. S. ....., 64 S. Ct. 559, par. 8	3
Texas & N. O. R. Co. v. Brotherhood of R. & S. S. S., Clerks, 281 U. S. 548, 50 S. Ct. 427, 74 L. Ed. 1034	3

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1944.

No. 1055

G. F. HOWARD, PETITIONER,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation, RESPONDENT.

REPLY BRIEF OF PETITIONER IN OPPOSITION.

Respondent's Brief in Opposition to Brief for Writ of Certiorari, Page 2.

1. See R. 6, par. 12—The Employer had refused to set up a Board to settle labor disputes June 1, 1933, over six years after the Railway Labor Act of 1926 made such a provision, and Petitioner appealed to E. M. Mosier, General Chairman, on September 11, 1934 (eighty days after the amendment June 21, 1934, of the Act of 1926) to handle Petitioner's case with the Adjustment Board, the same was authorized by the General Committee on November 19, 1934, but case was not filed until September 10, 1937. R. 82, last

paragraph, confirms that the Order of Railroad Telegraphers is a dominated union, see Petitioner's Brief for Certiorari, p. 6. Each member of the General Committee is an employee of the defendant, R. 12, Exhibit "B", Rule 30 (A) to (G) makes provisions for settlement of disputes and grievances, but what good is such an agreement unless it can be enforced? See R. 14, par. 5 and 6. A hearing as provided by the agreement had been denied, as well as a transcript of the evidence, if any was taken, and R. 17, par. 3 to 8, Defendant's counter charges, which were decided by a jury, R. 20, Exhibit "E" and R. 5, par. 8. See R. 88, par. 6 (8 lines from top).

a. See Meade v. Smith, 28 Kansas, p. 570. Under our Kansas jurisprudence the jury are triers of facts and their decision upon doubtful or disputed questions is final and conclusive.

b. See J. I. Case Co. v. National L. R. Board, 320 U. S. ....., 64 S. Ct. 579, par. 6, i. e. But, however engaged, an employee becomes entitled by virtue of the Labor Relations Act somewhat as a third party beneficiary to all benefits of the collective trade agreement, even if on his own he would yield to less favorable terms. The individual hiring contract is subsidiary to the terms of the trade agreement and may not waive any of its benefits, any more than a shipper can contract away the benefit of filed tariffs, the insurer the benefit of standard provisions, or the utility customer the benefit of legally established rates.

c. See Cf. H. J. Hines Co. v. National L. R. Board, 311 U. S. 514, 523-526, 61 S. Ct. 320, 324, 325, 326, 85 L. Ed. 309.

2. Under the ruling of John W. Callender, Director of Retirement Claims, of May 12, 1944, which reads as follows: See R. 87.

This will acknowledge receipt of your letter dated May 6, 1944, which reads in part as follows:

> "Would a bona fide reinstatement whether the employee returns to work or not with his seniority restored make him eligible for a pension under the Retirement Act?"

Present regulations of the Retirement Board provide as follows:

> "A bona fide reinstatement with restoration of seniority privileges, with or without pay for time lost, made for the purpose of and in contemplation of return to actual services (irrespective of whether actual service is resumed), operates to maintain the employment relation throughout the breach in service, provided that reinstatement is not a violation of the rights of other employees.
>
> "Participation in the reinstatement by representatives of the other employees, or acquiescence on their part in an actual return to service, shall be conclusive that the reinstatement was not a violation of the rights of such other employees.
>
> Very truly yours,
>
> JOHN W. CALLENDER, Director
> of Retirement Claims."

See R. 6, par. 12, the General Committee authorized Mr. E. M. Mosier to handle Petitioner's claim for reinstatement, and Award 606, April 7, 1938, R. 28.

See Stark v. Wickard, 320 U. S. ....., 64 S. Ct. 559, par. 8, i. e. Where complainant has an interest personal to himself and not possessed by the people generally in the enforcement of the laws, such interest may be adjudicated by the courts under their general powers. See page 569, col. 2, i. e. But where rights of collective bargaining, created by the same Railway Labor Act, containing definite prohibitions of conduct or were mandatory in form, this Court enforced the rights judicially, 320 U. S. 330, 331, 64 S. Ct. 149, 150, Cf. Texas & N. O. R. Co. v. Brotherhood of R. & S. S. S. Clerks, 281 U. S. 548, 50 S. Ct. 427, 74 L. Ed. 1034. See R. 62-64, and R. 9, last paragraph.

Respectfully submitted,

G. F. HOWARD, *Petitioner.*

Oberlin, Kansas, April 3, 1945.